

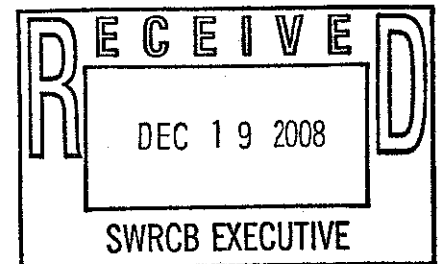


Western States Petroleum Association
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Michaeleen Mason
Director, Statewide Regulatory Issues

December 19, 2008

Jeanine Townsend
Acting Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



**Re: Comment Letter – Proposed Recycled Water Policy
Comments of Western States Petroleum Association**

Dear Ms. Townsend:

This letter contains comments from the Western States Petroleum Association ("WSPA") in response to the November 21, 2008 Notice issued by the State Water Resources Control Board ("State Board"). The Notice requested comments on the proposed Recycled Water Policy ("Policy") and its accompanying draft analysis under the California Environmental Quality Act ("CEQA").

WSPA is a non-profit trade organization representing companies that explore for, produce, refine, distribute and market petroleum, petroleum products, natural gas and other energy products in California and five other western states. We appreciate the opportunity to submit our comments on the Proposed Recycle Water Policy.

1. The Policy should not apply to non-municipal sources generally, or to oilfield produced water in particular. As currently written, it is not clear whether the Policy applies to recycling of water from non-municipal sources, and in particular to oilfield produced water.

Some WSPA members generate produced water from their oilfield operations. In some cases, such water is provided to water districts, which combine it with water from other sources and recycle it for irrigation purposes. Accordingly, WSPA has a significant interest in clarifying the scope and application of the Policy

The proposed Policy draft issued with the November 21 Notice is not the first recycled water policy the State Board has considered. The State Board previously issued a draft

Policy in September 2007, on which WSPA submitted a comment letter on October 26, 2007. In that letter, WSPA objected to the broad scope of the September 2007 Draft Policy and asked that it apply only to the regulated community it was intended to affect, municipalities.. The State Board did revise the policy consistent with WSPA's input.

On February 15, 2008, the State Board issued a revised proposed Policy which defined recycled water for purposes of the Policy as "limited to municipal wastewater sources." February 2008 Draft Policy, Section II.F; see also Responses to Comments, Proposed Recycled Water Policy, March 7, 2008, p. 37, response to comment R.1 (identifying the revised Section II.F as a response to comments from WSPA and other stakeholders). However, the State Board did not adopt the February 2008 proposal.

Instead, in September 2008, a group of stakeholders met. The group, including mainly water districts and sanitation agencies – WSPA and other industrial stakeholders did not participate – submitted their own draft Policy, dated August 28, 2008. On November 21, the State Board issued a Notice indicating its intent to take up the Policy as proposed by the stakeholder group.

However, the version of the Policy dated November 4, 2008, accompanying the State Board's November 21 Notice, contains a change from the August 28 stakeholder draft: A new phrase was added in the Preamble stating that "This Policy focuses on increasing the use of recycled water from municipal wastewater sources in a manner that implements state and federal water quality laws. . . ." November 2008 Draft Policy, p. 2 (added text underlined).

This statement requires clarification. First, it is ambiguous on its face. Does the added reference to "focus" indicate an intent to exclude recycled water from non-municipal sources from the Policy scope, in order to bring the August 2008 stakeholder draft into conformance with the State Board's February 2008 Draft Policy? Or does it indicate that while the new Policy is most concerned with increasing municipal wastewater recycling, other sources outside the central "focus" are also within its scope?

Second, there is nothing in the operational provisions of the November 2008 Draft Policy that corresponds to this Preamble statement, and some provisions appear to conflict with it. For example, Section 6(a)(2), describing the process for developing salt and nutrient management plans, provides: "It is the intent of this Policy that salts and nutrients from all sources be managed on a basin-wide or watershed-wide basis. . . ." November 2008 Draft Policy, p. 5 (emphasis added).

As currently drafted, the Preamble language is ambiguous. It will likely create confusion and the potential for future disputes in the application of the Policy.

As discussed in our October 26, 2007 comments, the reasonably foreseeable effect of applying the Policy too broadly will be to deter beneficial recycling of water from non-

municipal sources such as oilfield produced water. This may counterproductively lead to greater reliance on already limited water supplies for irrigation.

Accordingly, WSPA believes that the State Board made a sound decision in excluding non-municipal sources from the proposed February 2008 Policy. We ask the State Board to incorporate the same language into the operational provisions of the November 2008 Draft Policy, defining recycled water for purposes of the Policy as "limited to municipal wastewater sources."

In fact, it is rather surprising that the proposed Policy addressing "recycled water" contains no definition of that term. Specifically, we suggest that the following sentence be added as new Section 2(g), based upon the language in the February 2008 Draft Policy, Section II.F: "For purposes of this Policy, the term "recycled water" has the same meaning as in Water Code section 13050(n) but is limited to municipal wastewater sources."

Any other provisions of the Policy that may be inconsistent with this definition should be revised for consistency; e.g., Section 6(a)(2), should be changed to read: "It is the intent of this Policy that salts and nutrients from all **recycled water** sources be managed on a basin-wide or watershed-wide basis. . . ." (added text in bold italics).

2. If the Policy applies to existing non-municipal sources of recycled water, the CEQA documentation is inadequate. Our October 2007 comments also noted inadequacies in the "environmental checklist" that accompanied the September 2007 Policy, under the State Board's certified regulatory program for compliance with CEQA.

The same is true of the environmental checklist issued with the November 2008 Draft Policy, which likewise focuses solely on the Policy's effect of encouraging *increased* use of recycled water, yet fails to address potential *disincentives* to continuing existing recycling programs such as those which utilize oilfield produced water. Such disincentives must necessarily increase the use of other water supplies to meet irrigation needs.

The demands on California's limited water resources already represent an environmental problem, as the Policy acknowledges. Increasing reliance on those limited resources, in turn, would have potentially significant impacts with regard to water supply utilities, agricultural resources, water quality and biological resources. The checklist fails to address any of these impacts.

A lead agency must adequately analyze significant environmental impacts that are reasonably foreseeable consequences of adopting a policy or program. See CEQA Guidelines section 15152(b); *No Oil, Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223, 237 (1987) (an agency cannot forego analysis of reasonably foreseeable impacts that would result from its "crystallized commitment" at the policy or program level).

If the Policy is not limited to recycling from municipal wastewater sources then, by acknowledging only impacts related to *increased* water recycling and ignoring those related to *decreased* recycling as the result of the Policy, the checklist fails to address reasonably foreseeable environmental consequences as required by CEQA.

3. Alternatively, if the Policy is applied to non-municipal sources, non-municipal stakeholders must participate in its implementation. As noted above, the November 2008 Draft Policy is closely based on the August 2008 draft proposal of a group of water industry and municipal wastewater stakeholders. That stakeholder group was not representative of all stakeholders.

If the State Board wants the scope of the Policy to reach a broader universe of stakeholders, all such stakeholders must participate in its implementation. In particular, affected stakeholders must have a full and fair opportunity to participate in development of the salt and nutrient management plans envisioned by the Policy, if their activities are to be affected by the implementation of such plans.

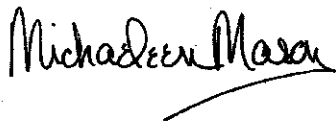
As discussed above, WSPA has a significant interest in particular regarding the recycling of oilfield produced water. If the State Board does not accept our request to limit the Policy scope to recycled water from municipal sources, we ask that the Board direct the Regional Boards and water districts to be inclusive in their implementation of the Policy.

All stakeholders involved in recycled water uses within a particular basin, including industrial as well as municipal sources, should participate in the process of developing and implementing the management plans and ensuring that the planning process utilizes sound science.

Thank you for considering WSPA's comments. Please contact me at 916-498-7753 if you have any questions or wish to discuss our comments.

We look forward to further discussions of these issues with the State Board.

Sincerely,



cc: Catherine Reheis-Boyd, Executive Vice-President and COO, WSPA
Tam Doduc, Chair, SWRCB
Gary Wolff, Vice-Chair, SWRCB
Arthur G. Bagget, Member, SWRCB
Charles Hoppin, Member, SWRCB
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Dorothy Rice, Executive Officer, SWRCB
Jonathan Bishop, Chief Deputy Officer, SWRCB